

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES ALLEN KINNEY,) CASE NO.: C08-0489-RAJ-MAT
Petitioner,)
v.) ORDER DENYING PETITIONER'S
JEFFREY A. UTTECHT,) SECOND AND THIRD MOTIONS
Respondent.) FOR APPOINTMENT OF COUNSEL

Petitioner is a state prisoner who has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner previously filed a motion for appointment of counsel (Dkt. No. 9), which the Court denied (Dkt. No. 10). Petitioner has since filed a second and third motion for appointment of counsel (Dkt. Nos. 12 and 13). Having considered the second and third motions, the Court does hereby find and ORDER as follows:

(1) Petitioner's second and third motions for appointment of counsel are DENIED.

There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254 unless an evidentiary hearing is required. *See McCleskey v. Zant*, 499 U.S. 467, 495 (1991); Rule 8(c) of the Rules Governing Section 2254 Proceedings for the United States District Courts, 28 U.S.C.

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01 foll. § 2254. The Court may exercise its discretion to appoint counsel for a financially eligible
02 individual where the “interests of justice so require” under 18 U.S.C. § 3006A. Whether counsel
03 should be appointed turns on the petitioner’s ability to articulate his or her claims in light of the
04 complexity of the legal issues, and the likelihood of success on the merits. *See Weygandt v. Look*,
05 718 F.2d 952, 954 (9th Cir. 1983).

06 Petitioner fails to demonstrate that the interests of justice would be best served by
07 appointment of counsel in this matter. If the Court later orders an evidentiary hearing, the Court
08 will appoint counsel.

09 (2) The Clerk shall forward a copy of this Order to petitioner, to counsel for
10 respondent, and to the Honorable Richard A. Jones.

11 DATED this 28th day of May, 2008.

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14 Mary Alice Theiler
United States Magistrate Judge

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